

AUG 01 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AGUSTO GARCIA-SALLES,

Defendant - Appellant.

No. 05-50278

D.C. No. CR-04-01149-CAS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Agusto Garcia-Salles appeals from the 46-month sentence imposed after his guilty-plea conviction for being an illegal alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Garcia-Salles' contentions regarding *Almendarez-Torres v. United States*, 523 U.S. 224 (2005), are foreclosed by this circuit's case law. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that this court continues to be bound by the Supreme Court's holding in *Almendarez-Torres*).

In addition, Garcia-Salles' contention that the district court's condition of supervised release requiring him to report to his probation officer within 72 hours of re-entry into the United States violates the Fifth Amendment is foreclosed by this court's opinion in *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the reference to § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED.